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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Mark LANDESMANN

Title: BUYER-DRIVEN TARGETING OF PURCHASING ENTITIES

Appl. No.: 09/888,439

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Examiner: Khanh H. Le

Art Unit: 2100

Commissioner for Patents
Box NON-FEE AMENDMENT
Washington, D.C. 20231

Sir:

DECLARATION UNDER 37 C.F.R. §1.132

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I, Rajiv Lal, a citizen of U.S., residing at 1 Hastings Road, Weston, MA, declare and state that:

1. I did my undergraduate work in mechanical engineering at the Indian Institute of Technology at Kanpur, India and received my PhD in Industrial Administration from Carnegie-Mellon University.

2. I am the Stanley Roth, Sr. Professor of Retailing at Harvard Business School where I am the course head for the required course in Marketing in the first year of the MBA program and also teach in several Executive Education programs including the Top Management Seminar for Retailers and Suppliers. Previously, I was Professor at the Graduate School of Business at Stanford University since 1982. I was the Thomas Henry Carroll Ford Foundation Visiting Professor at Harvard Business School for 1997-98. I was visiting Professor of Marketing at INSEAD, France in 1986, 1988, 1992 and 1993. I have been an Area Editor for *Marketing Science* and currently serve as the Co-Editor for the *Journal of Quantitative Marketing and Economics.*

3. My current research is concerned with the dramatic changes affecting retailing. My most recent work in this area studies the impact of using the Internet as a

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channel of distribution on a retailer's pricing, merchandising and branding strategy. My paper on this subject was published in Marketing Science and was nominated for the award of the best paper in Marketing and Management Science. My earlier work in retailing studied the impact of competition between different retail formats, such as EDLP and Hi-Lo grocers. I have also studied the consequences of the increasing use of store brands by grocery retailers on store loyalty and its implications for packaged goods manufacturers. My earlier research has focused on pricing, trade promotions and salesforce compensation plans.

4. I have published the following Articles and Case Materials:

Articles

Corstjens, Marcel, and R. Lal. "Building Store Loyalty Through Store Brands." Journal of Marketing Research 37, no. 3 (August 2000): 281-291.

Lal, R., and M. Sarvary. "When and How Is the Internet Likely to Decrease Price Competition." Marketing Science 18, no. 4 (1999): 485-503. (Nominated for the Little Award.)

Lal, R., and Miguel Villas-Boas. "Price Promotions and Trade Deals with Multiproduct Retailers." Management Science 44, no. 7 (July 1998).

Lal, R., and R. Rao. "Supermarket Competition: The Case of Every Day Low Pricing." Marketing Science (winter 1997).

Lal, R., and C. Narasimhan. "The Effect of Manufacturer Advertising on Retail and Wholesale Margins." Marketing Science (spring 1996).

Lal, R., and J. M. Villas-Boas. "Exclusive Dealing and Price Promotions." Journal of Business (April 1996).

Lal, R., J. D. Little, and J. M. Villas-Boas. "Forward Buying, Merchandising and Manufacturer Trade Deals: A Model." Marketing Science (winter 1996).

Lal, R., M. Corstjens, and J. Corstjens. "Retail Competition in the Fast Moving Consumer Goods Industry: The Case of France and the U.K." European Marketing Journal (December 1995).

Lal, R., and V. Padmanabhan. "Competitive Response and Equilibria." Marketing Science (spring 1995).

Agrawal, D., and R. Lal. "Contractual Arrangements in Franchising: An Empirical Investigation." Journal of Marketing Research 32, no. 2 (May 1995).

Lal, R., and C. Matutes. "Retail Pricing and Advertising Strategies." Journal of Business (July 1994).

Lal, R., D. Outland, and R. Staelin. "Salesforce Compensation Plans: An Individual Level Analysis." Marketing Letters (April 1994).

Lal, R. "Salesforce Compensation Plans: Managerial Insights from Recent Theoretical Developments." Recherche et Applications en Marketing (January 1994).

Lal, R., and V. Srinivasan. "Compensation Plans for Single- and Multi-Product Salesforces: An Application of the Holmstrom-Milgrom Model." Management Science (July 1993).

Rangan, V. K., R. Lal, and E. Maier. "Managing Marginal New Products." Business Horizons 35, no. 5 (September-October 1992): 35-42.

Lal, R., and Anne Coughlan. "Retail Pricing: Does Channel Length Matter." Managerial and Decision Economics (September 1991).

Lal, R. "Manufacturer Trade Deals and Retail Price Promotions." Journal of Marketing Research (November 1990).

Lal, R. "Improving Channel Coordination Through Franchising." Marketing Science (Fall 1990).

Lal, R. "Price Promotions: Limiting Competitive Encroachment." Marketing Science (Summer 1990). (Nominated for the John D.C. Little award for the best article in Management & Marketing Science in 1990.)

Lal, R., J. S. Raju, and V. Srinivasan. "The Effects of Brand Loyalty on Competitive Price Promotional Strategies." Management Science (March 1990). (Nominated for the John D. C. Little.)

Lal, R., and Carmen Matutes. "Price Competition in Multi-Market Duopolies." The RAND Journal of Economics (Winter 1989).

Lal, R., and Carmen Matutes. "Price Competition in Multi-Market Duopolies." The RAND Journal of Economics (Winter 1989).

Lal, R. "Delegating Pricing Responsibility to the Salesforce." Marketing Science (Spring 1986).

Lal, R., and Richard Staelin. "Salesforce Compensation Plans in Environments with Asymmetric Information." Marketing Science (Summer 1986). (Runner-up, TIMS College of Marketing award for the best article in Management and Marketing Science, 1986.)

Lal, R., A. K. Basu, V. Srinivasan, and Richard Staelin. "A Theory of Salesforce Compensation Plans." Marketing Science (Fall 1985). (Winner, TIMS College of Marketing award for the best article in Management and Marketing Science, 1985.)

Lal, R., and Richard Staelin. "An Approach for Developing an Optimal Discount Pricing Policy." Management Science (December 1984).

Teaching and Training Materials

Lal, R. "ETrade Securities, Inc." M-286, Stanford Graduate School of Business Case Series.

Lal, R. Hudson's Bay Co. M-283, Stanford Graduate School of Business Case Series.

Lal, R. Orchard Supply Hardware Stores. M-282, Stanford Graduate School of Business Case Series.

Lal, R. "Sears, Roebuck and Co." M-278, Stanford Graduate School of Business Case Series.

Lal, R. SmithKline Beecham (SB). M-281, Stanford Graduate School of Business Case Series.

Lal, R. Value Pricing at Procter & Gamble (B). M-284, Stanford Graduate School of Business Case Series.

Harvard Business School Course Materials

Lal, Rajiv, and Edie Prescott. "Callaway Golf Company." Harvard Business School Case 501-019.

Lal, Rajiv, and Patricia Carrolo. "Callaway Golf Company TN." Harvard Business School Teaching Note 501-082.

Lal, Rajiv, Michael J. Roberts, and Walter J. Salmon. "Chapters.ca." Harvard Business School Case 801-158.

Lal, Rajiv, and David Kiron. "Charles Schwab Corp.: Introducing A New Brand." Harvard Business School Case 502-020.

Lal, Rajiv, and Sean Lanagan. "Documentum, Inc." Harvard Business School Case 502-026.

Lal, Rajiv. "Documentum, Inc. (TN)." Harvard Business School Teaching Note 503-035.

Lal, Rajiv, and Amy H. Nelson. "First USA and Internet Marketing." Harvard Business School Case 500-043.

Lal, Rajiv, and James Weber. "Freeport Studio." Harvard Business School Case 501-021.

Lal, Rajiv. "Freeport Studio, TN." Harvard Business School Teaching Note 502-087.

Lal, Rajiv, Jodi L. Prins, and Nilanjana R. Pal. "GetConnected.com." Harvard Business School Case 501-025.

Lal, Rajiv, and Ann Leamon. "Guru.com." Harvard Business School Case 501-005.

Lal, Rajiv. "Harrah"s Entertainment Inc." Harvard Business School Course Software 502-711.

Lal, Rajiv, and Patricia Carrolo. "Harrah's Entertainment Inc." Harvard Business School Case 502-011.

Lal, Rajiv. "Harrah's Entertainment Inc. TN." Harvard Business School Teaching Note 502-091.

Lal, Rajiv, Kirthi Kalyanam, Shelby Mc Intyre, and Edie Prescott. "HP Consumer Products Business Organization: Distributing Printers via the Internet." Harvard Business School Case 500-021.

Lal, Rajiv. "HP Consumer Products Business Organization: Distributing Printers via the Internet, TN." Harvard Business School Teaching Note 503-025.

Lal, Rajiv, and Purnima P Kochikar. "Intuit QuickBooks." Harvard Business School Case 501-054.

Bell, David E., Rajiv Lal, and Ann Leamon. "Lees Supermarkets: Customer Loyalty Programs." Harvard Business School Case 500-038.

Dolan, Robert J., Rajiv Lal, and Perry Fagan. "net.Genesis, Inc." Harvard Business School Case 500-009.

Lal, Rajiv, and Nilanjana R. Pal. "New Beetle, The." Harvard Business School Case 501-023.

Lal, Rajiv. "New Beetle, The TN." Harvard Business School Teaching Note 502-088.

Lal, Rajiv, and Patricia Carrolo. "Novartis AG: The U.S. Lamisil Switch." Harvard Business School Case 502-015.

Knoop, Carin-Isabel, Rajiv Lal, and Suma Raju. "Omnitel Pronto Italia." Harvard Business School Case 501-002.

Knoop, Carin-Isabel, Rajiv Lal, and Suma Raju. "Omnitel Pronto Italia TN." Harvard Business School Teaching Note 501-075.

5. I declare that I have read and understood the specification and drawings for application serial number 09/888,439 filed on June 26, 2001, titled "BUYER-DRIVEN TARGETING OF PURCHASING ENTITIES" and have read and understood claim 1, set out below.

6. Reviewed Claim 1.

1. (Amended) A method for buyer-driven targeting by a system comprising: receiving directly or indirectly from each of a plurality of buyer entities at least one respective third party purchase record or information verifiably derived therefrom, said purchase record or information verifiably derived therefrom comprising data associated with the purchase of products or services for which the payment was not carried out by the system; storing information associated with said data; for a plurality of product or service items offered for sale, wherein different items in said plurality of items are either manufactured or marketed or distributed or provided by different third party advertisers in a plurality of third party advertisers, and wherein said manufacture, marketing, distribution or provision is not carried out by the system in the ordinary course of business, making or helping make with respect to at least one of said buyer entities, based at least in part on said data, at least one discriminatory decision associated with the offering of at least one from among a plurality of different preferential contingent incentives, with each incentive associated with at least one of said items and associated with one of the third party advertisers, wherein there is at least one different preferential contingent incentive from each of a plurality of the different third party advertisers, each of said incentives offering at least one benefit in exchange for at least one action associated with a possible purchase of at least one of said items, each item associated with at least one of said third party advertisers, said benefit not normally and publicly accessible to said buyer entity or other buyer entities in the same geographic region on terms which are at least objectively equivalent, and which do not include material conditions that are different from said at least one action, said discriminatory decision regarding the at least one incentive that is to be offered to the buyer entity being based at least in part on stored data relating to purchases made by said buyer entity from merchants other than the third party advertiser that is associated with the incentive; and

offering or facilitating the offering of at least one of said preferential contingent incentives to said buyer entity, without transferring to said third party advertiser directly or indirectly any full name associated with said buyer entity at the time that the incentive is offered but has not yet been responded to by said buyer entity, with the condition precedent for this step that the system has received directly or indirectly from that buyer entity the at least one respective third party purchase record or information verifiably derived therefrom.

7. I declare, based on my 20 years of experience in the retailing, advertising and promotion industries and my knowledge of marketing, that the invention defined in claim 1 is novel and non-obvious in view of the prior art references cited above and also in view of my knowledge of the art. I base this conclusion on the following:

8 The invention of claim 1 defines a method for creating a working forum or marketplace which merchants and other advertisers may use to acquire potentially valuable buyer entities as new customers or as significantly better customers, while providing a way for buyer entities to self-profile in an anonymous way relative to advertisers, and including a motivation to self-profile.

9. THE PROBLEM: I believe that the following accurately states some of the problems involved. It is widely known that a relatively small number of buyers account for the lions share of the revenues and profits of most companies. As stated above, it is therefore crucial for an advertiser to direct his customer acquisition efforts at those buyer entities that are potentially the most valuable customers. However, the prior art provides advertisers with few ways of identifying prospective new customers with verifiably attractive purchase histories (those who have the potential of becoming much better customers based on their purchases with competing companies), nor does it offer an effective method of communicating with such prospects without having identified them by name. Importantly there is no cost effective way to send bull's-eye communications to such prospective new customers, which are highly relevant based on their demonstrated previous purchase interests, in a way to motivate them to respond and to continue to respond in part because they understand and expect these communications to be highly relevant to them personally and to contain particularly lucrative offers, but to also obviate permission issues.

Importantly, an advertiser can generally not obtain reliable and relevant purchase information from competing sellers, because these merchants will not want to make their customer lists available to their immediate competitors. Similarly, a retailer will likely refuse payments made with the card of a credit card company which forwards that retailer's transaction data to competitors. Furthermore, merchants can generally not sell the individually identifiable information of consumers without obtaining the permission of those consumers (or informing those consumers of their practices in this regard, and allowing those consumers to opt-out). This is because of privacy laws, such as the Gramm-Leach-Bliley Act, and public pressure. From the consumer standpoint, I believe most consumers will only rarely let a company – even one that they trust – resell their personal transaction data, because they do not know nor can they control how their information is used by the party or parties to whom their data is sold. Furthermore and importantly, no single seller can provide a comprehensive profile about a particular buyer entity because that seller generally only possesses a fraction of that buyer entity's purchase history – records of the transaction that the buyer entity made with that seller.

From the advertiser's standpoint, it is as difficult to obtain reliable and relevant purchase information directly from buyer entities as it is to obtain such information from sellers. The advertiser faces significant problems in trying to purchase the buyer entity information directly from the buyer entity itself. First, a fundamental conundrum (the valuation problem) arises when a merchant attempts to purchase buyer entity information for cash; namely the merchant cannot cost-effectively pay cash for information until the merchant has seen and evaluated the information and determined its value (which varies widely among buyer entities). But then the merchant has the information and the buyer entity's identity! Second, the actual value of a buyer entity's information further depends on an unknown variable; namely, the willingness and propensity of that buyer entity to actually respond to any promotions that are later sent to that buyer entity on the basis of the information it has provided. However, this propensity to respond to future promotions is not known at the time that the information is purchased. Third, buyer entities will not trust most advertisers with their individually identifiable transaction information. Fourth, although buyer entities are sometimes willing to answer questions about their purchase behavior in exchange for a reward, I believe that such information is known to be highly unreliable because very few consumers answer these questions truthfully. Consumer answers would become even less reliable if they knew that the answers they give to questions would be routinely used to give better rewards to some consumers than to others, because consumers would then have an incentive to lie about their true purchase behavior.

10. I declare that the combination of claim 1 includes the necessary elements to create a marketplace for a fundamental trade between interested buyer entities and advertisers, with the combination of claim elements creating a variety of unique and non-obvious features, motivations, and synergies. The claimed combination provides the elements to make such a trading system work to motivate the buyer entity itself to transfer the information in its control voluntarily directly or indirectly to the system and to continue to provide that information (thereby removing the permission problem). The claimed combination also goes toward solving the information valuation problem because the consideration offered to the buyer entity is not direct cash paid on receipt of the information. The claimed combination importantly requires that the information transferred directly or indirectly from the buyer entity be in the form of verified transaction records, so that there is a high potential that the information is reliable. Importantly, the claimed combination requires that the incentives that are provided carry benefits with preferential terms (an important motivator for the buyer entity to provide its records or authorize the provision of its

records initially and to keep providing or authorizing the provision of its records), and contingent, so that the buyer entity must take some further action that relates to the purchase of a product offered by a participating advertiser in order to receive the incentive. Of equal importance as a motivator to buyer entities is the requirement that there be a participating group of third party advertisers across an industry or across multiple industries to thereby create an ever-increasing universe of preferential incentives for which the buyer entity may become eligible. With such a claimed combination of elements, individual buyer entities can use their purchase histories to have a potentially large number of merchants/advertisers compete for their unique business, especially in those products and service categories in which a given buyer entity buys the most, without having to disclose (at least not before the time that they respond to an offer) their identifiable purchase history to anyone except to one trusted corporate or electronic intermediary, which need not be the system itself.

From the advertiser's standpoint, the advertiser could not cost-effectively afford to make such preferential promotions available to everyone, because doing so would entail attracting "opportunity seekers" that take advantage of the initial promotion without having a similar longer-term purchase interest. The preferential, contingent nature of the incentives, coupled with the requirement that the buyer entity take a further action, and coupled with the condition precedent that the buyer entity have directly or indirectly transferred its verifiable purchase data provide an unusual combination of elements that is likely to attract those buyer entities most likely to make or to consider making purchases through this mechanism. Note that an unusual effect of this system and method is that it facilitates advertisers targeting their most attractive and expensive promotions to buyer entities who are frequent customers of their competitors (who obviously would not willingly provide such data for this purpose.)—i.e., the records and/or information are coming from outside the advertiser's own system.

11. With specific reference to Walker '534, this patent is directed to promoting the use within the system of a credit card through incentives. There is no suggestion to transfer in third party generated records or other verifiable information from outside of the system's credit card payment business, nor is there any suggestion to offer incentives from among a plurality of incentives provided by the third party advertisers, nor to allow any third party advertisers to benefit from the information and potentially access directly or indirectly the purchase records of their competitors. Coupled with the above, there is no making or helping to make a decision regarding the eligibility of a particular buyer entity to be offered a

preferential contingent incentive from a third party advertiser. Also, the rewards offered by Walker are based only on a particular use of the system's financial account or credit card, and do not relate to the purchase of third party products. Because Walker does not offer third-party incentives and because in Walker there are no third party advertisers, there is no need to find a method which allows these third party advertisers to use information.

12. The MacAvinta reference and Perine reference refer to the attempted merger of the Doubleclick database with the Abacus database and simply demonstrate that actual purchase histories are known valuable commodities and discuss potential privacy concerns and the lack of consumer permissions. There is no discussion of the information valuation problem or any of the other elements of the claimed invention. The data mining article published by Ontario's Information and Privacy Commissioner, "Data Mining: Staking A Claim On Your Privacy," simply recognizes that personal information can be a property right of the consumer. The article by Dave Redell on Information Technology and Privacy refers to select merchants using "point-of-sale equipment" to more efficiently capture transaction information at the point of sale which pertains to the goods sold by these same merchants. Seth Godin's (My) Permission Marketing, Chapter 10, relates to the proposition that it would be more effective to obtain the permission of the consumer before sending him/her communications. However, Godin (I) never contemplate(s) the trade of verifiable transaction information by buyer entities (or by anyone else) for a benefit, the significant heretofore unsolved problems regarding such a trade, nor any solution to these problems, much less the solution proposed by the present invention. Likewise, I have reviewed each of the other references cited above. These references do not describe the combination of elements set forth in claim 1, or provide a motivation to modify the Walker patent to create a new system that includes the combination of Claim 1, or to create a new system not necessarily based on Walker that includes the combination of Claim 1.

13. It is my opinion that the present claimed invention has a similar synergistic effect with respect to the virtuous cycle between the provision of information of a buyer entity and its response to system-generated incentive offers. As a buyer entity augments its profile with increasingly comprehensive and varied information, it receives better (more highly remunerated) incentive offers, and becomes more likely to respond. As it responds by purchasing products or accepting incentive offers, that information will normally be uploaded into the system as well. Because advertisers/merchants have the greatest interest in paying for the provision of incentive offers to those buyer entities that have a track record

of previously responding to system-generated incentive offers, the attractiveness of their incentive offers increases further, which increases the response of buyer entity, and so forth.

14. It is my opinion that a final synergy that the present system generates is that advertisers compete for the business of buyer entities by setting incentive reward levels that will give their particular incentive offer a higher standing as buyer entities sort their incentive offers by level of attractiveness, or as the system presents these offers to buyer entities in a sequence determined by their value. As a result of this competition, a market is effectively created for the new business of a buyer entity, based on that buyer entity's purchase record, and its demonstrated propensity to respond to incentive offers for new products and services.

15. Based on my 20 years of academic and industry experience, I state unequivocally that the combination of elements set forth in claim I is novel and non-obvious in view of the cited prior art and in view of my own personal knowledge of the prior art.

I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Respectfully submitted,

By: RAJIV LAL
(FULL NAME)

Dated: March 8, 2003

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